



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

OPR, MNR, MNSD, FF

### Introduction

This hearing was convened by way of a conference call in response to an Application for Dispute Resolution made by the landlord for an Order of Possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for an order permitting the landlord to keep all or part of a security deposit and to recover the filing fee from the tenant for the cost of this application.

As the tenant had left the rental unit, the landlord withdrew their application requesting an Order of Possession for unpaid rent or utilities.

The landlord filed this application on May 5, 2013 and served the tenant by registered mail on May 6, 2013 with a copy of the application and Notice of Hearing. The tenant confirmed receipt of the hearing documents and of evidence submitted by the landlord in advance of the hearing. Based on this I find the tenant was served in accordance with the *Residential Tenancy Act*.

Both parties attended the conference call hearing, during which they gave affirmed testimony. Only the relevant evidence, relating to the issues applied for, has been considered in this Decision.

### Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent or utilities?
- Is the landlord entitled to keep all or part of the security deposit in full or partial satisfaction of the claim?

### Background and Evidence

Both parties agree that the tenancy started on September 1, 2012 for a fixed term of six months, due to end on February 28, 2013 with the option of extending to a month-to-month tenancy. However, the tenancy ultimately ended with the tenant leaving on February 17, 2013. Rent in the amount of \$900.00 was payable on the 1<sup>st</sup> day of each month. The landlord collected a security deposit from the tenant in the amount of \$450.00 on August 19, 2013 and a written tenancy agreement was completed.

The landlord testified that on February 1, 2013 the tenant paid only \$500.00 for the February rent payment and provided the landlord with a letter, submitted as evidence, detailing the fact that the outstanding \$400.00 payment could not be made because \$600.00 was needed for a damage deposit for another place and that the tenant's security deposit could be used for payment of the outstanding rent. As a result, the landlord served the tenant with a 10 Day Notice to End Tenancy for unpaid rent or utilities on February 7, 2013 by posting it on the tenant's door with an effective date of vacancy of February 18, 2013. The landlord testified that the tenant vacated the rental unit on February 17, 2013 and on March 4, 2013 the landlord was provided with the tenant's forwarding address. As a result, on February 20, 2013 the landlord deducted the outstanding rent of \$400.00 from the \$450.00 security deposit and sent the outstanding \$50.00 back to the tenant to the forwarding address provided.

The tenant testified that she owed \$400.00 in rent for the month of February, but had given a written notice on February 1, 2013 to end the tenancy and vacate the rental unit on February 28, 2013 but actually left on February 17, 2013 because the landlord had evicted her.

### Analysis

Under Section 21 of the *Residential Tenancy Act*, a tenant must not apply a security deposit as rent unless the landlord gives written consent. There is no evidence to suggest that this written consent was given to the tenant by the landlord.

Section 45 of the *Act* states that a tenant must give the landlord one full rental month of notice before ending a tenancy; as the tenancy had the option of continuing on to a month-to-month tenancy (periodic tenancy), the tenant would have had to give the landlord a month's written notice **before** February 1, 2013 as payment of rent was due on the 1<sup>st</sup> of every month. However, the tenant provided written notice **on** February 1, 2013 and left on February 17, 2013, giving insufficient time for the landlord to mitigate any losses incurred as a result of the tenancy ending due to non-payment of rent. Therefore, I find that the landlord is entitled to recover the outstanding \$400.00 for unpaid rent relating to February 2013.

As the landlord has been successful in this matter, the landlord is entitled to recover from the tenant the \$50.00 filing fee for this application. Therefore, the total amount awarded to the landlord is \$450.00. As the landlord already holds a \$400.00 security deposit, because \$50.00 was returned to the tenant, I order the landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 38(4)(b) of the *Act*, leaving an outstanding balance of \$50.00 payable by the tenant to the landlord.

### Conclusion

For the reasons set out above, I hereby grant a Monetary Order in favor of the landlord pursuant to Section 67 of the *Act* in the amount of **\$50.00**.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 27, 2013

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Residential Tenancy Branch